IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.540 OF 1995

Mrs.Malti Venkatrao Kulkarni Appellant
(Original Applicant)

vs.

1. Mr.G. Yoganand
2. New India Assurance Co. Ltd., Bombay Respondents
(Original Opposite party & Insurers).

Mr.S.R.Kudroli for the appellant.

None for the respondents though served.

**CORAM : ANOOP V. MOHTA,J.**

**DATED : 18th July, 2007**

**ORAL JUDGMENT:**

The claimant/appellant being dissatisfied by the judgement and order dated 7th September, 1994 passed by the Motor Accidents claims Tribunal, Bombay (the Tribunal) has preferred the present appeal for enhancement of the compensation.

2. On 9.11.1990 accident took place and that resulted into death of Vijay (deceased) who was aged about 14 years and was studying in the school.

3. The appellant, therefore, preferred this appeal being mother of the deceased and claimed compensation of Rs.1,50,000/- on account of the fatal injuries caused to

the deceased.

4. After considering the evidence and material on record, the Tribunal has held that the Bus No.MMP-6600 caused death to the deceased on 19th November, 1990 because of fast, rash and negligent driving. The vehicle was owned by opponent-respondent no.1 herein. The vehicle was insured with respondent no.2-New India Assurance Co.Ltd., Bombay. However, the Tribunal has restricted the claim to Rs.59,000/- and awarded interest at the rate of 12% from the date of the application till payment. The learned counsel appearing for the appellant has basically contended that at the relevant time the deceased was 14 years of age. He was studying. He was brilliant student. He was doing some part time job. The learned counsel appearing for the appellant has principally relied on **Manju Devi & anr. v. Musafir Paswan & anr., 2005(1) T.A.C. 609 (SC),** whereby the Supreme Court based on the Second Schedule of the Motor Vehicle Act, 1988 granted compensation to a boy of 13 years of age by treating him to be a non-earning person and, therefore, a sum of Rs.15,000/- per year taken as income and applied multiplier of 15 and thereby granted the compensation to the tune of Rs.2,25,000/-. He further relied on **Shanti Bai & ors. v. Charan Singh & ors., 1998 ACJ 848 SC** whereby the Supreme Court has enhanced the income of the deceased by taking note of

notional future income and granted the award of Rs.1,50,000/-.

5. In **Supe Dei & ors. v. National Insurance Co. Ltd. & anr., 2002 ACJ 1166 SC 3884,** the Supreme Court has held that the Second Schedule to the Motor Vehicle Act, 1988 in turn does not apply to claim under Section 166 since the claim is made under Section 163-A, but it serves as a guideline for the purpose of determination of compensation under Section 166 of the Motor Vehicle Act.

6. In **Nagappa v. Gurudayal Singh & ors., 2003 ACJ (SC) 12**, the Claims Tribunal is empowered to determine the compensation which should be just and fair. There is no other limitation or restriction on its power to award just and fair compensation.

7. Taking into consideration the view taken by the Apex Court, I am inclined to interfere with the order passed by the Tribunal based on the Apex Court decision in Manju Devi (supra).

8. The deceased was 14 years of age. Therefore, based on Second Schedule being a non-earning member, a sum of Rs.15,000/- is taken as income with multiplier of 12. Based on that the compensation comes to Rs.1,80,000/-.

As the appellant has claimed Rs.1,50,000/-, I am restricting the claim only to that extent.

9. I, accordingly, modify the order of the Tribunal to the above extent.

10. Merely because the deceased was earning as mentioned by dong some part time job, that according to me should not be the criteria to deny the above compensation, in the facts and circumstances of the case and considering the age of the deceased, the three surviving brothers and mother, who was 48 years of age at the relevant time.

11. I am considering the above amount which is inclusive of the amount of loss to the estate and funeral expenses. The appellant is entitled for interest at the rate of 9% on the balance amount of Rs.91,000/- from the application till payment.

12. In the result, the appeal is allowed partly and the impugned order is modified accordingly. Hence the following order:

**ORDER**

. The Opposite party-respondent no.1, Mr.G.Yoganand and

Insurers, New India Assurance Co.Ltd. are directed to pay to the appellant jointly and severally an amount of Rs.1,50,000/-, inclusive of Rs.59,000/- as awarded. The balance amount of Rs.91,000/- is to be paid with interest at the rate of 9% from the date of the application till payment with costs. The amount so recovered as directed to be paid to the appellant-mother. No costs.

[ANOOP V. MOHTA,J.]